

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 238
USE TAX LAW

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Historical Note: Chapter 238 of Title 18, Administrative Rules, is based substantially upon Regulation 73-9 of the Department of Taxation [Eff 1/1/71; R 2/16/82], Regulation 61-2 of the Department of Taxation [Eff 12/21/61; R 2/16/82].

HRS §238-1 §18-238-1 Definitions. For purposes of this chapter:

“Consummated” is the place of delivery meaning the state or place where the purchaser or its agent accepts a delivery of tangible personal property.

“Landed value” means the value of imported tangible personal property which is the fair and reasonable cash value of the tangible personal property when it arrives in Hawaii. It includes the purchase price, shipping and handling fees, insurance costs, and customs duty. It does not include sales tax paid to another state.

“Place of delivery” means the state or place where the purchaser or its agent accepts a delivery of tangible personal property.

“Price” means the total amount for which tangible personal property is purchased, valued in money, whether paid in money or otherwise, and wheresoever paid, provided that cash discounts, trade and quantity discounts allowed and taken on sales shall not be included. [Eff 5/26/98] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §238-1)

HRS §238-2 § 18-238-2 Imposition of tax, exemptions. (a) Wholesaler, jobber, manufacturer. Section 238-2(1), HRS, provides that if the importer or purchaser is licensed under the general excise tax law, chapter 237, HRS, and is (1) a wholesaler or jobber, importing or purchasing tangible personal property exclusively for the purposes of resale at wholesale or (2) a manufacturer importing or purchasing material to be incorporated by the manufacturer into a finished product, which, when sold, will result in a further tax on the activity of the manufacturer as a manufacturer or as a wholesaler, and not as a retailer, there shall be no tax. If the importer or purchaser as set forth in (1) or (2) above is also engaged in business as a retailer, subsection (b) shall apply to the importer or purchaser, but the director shall refund to the importer or purchaser in the manner provided under section 231-23(d), HRS, such amount of tax as the importer or purchaser shall, to the satisfaction of the director, establish to have been paid by the importer or purchaser on such imports or purchases which were sold by the importer or purchaser as a wholesaler or as a manufacturer. See subsection (h) for deduction and credit procedures, other than refund method provided in section 231-23(d), HRS, which a wholesaler or manufacturer who is also a retailer is permitted to use in determining tax liability under chapter 238, HRS.

(b) Retailer or any other person not exempted by subsection (a). Section 238-2(2), HRS, provides that if the importer or purchaser is licensed under the general excise tax law, chapter 237, HRS, and is (1) a retailer or other person importing or purchasing for purposes of resale and not exempted by subsection (a), or (2) a manufacturer as set forth in subsection (a)(2) except for the fact that the manufacturer sells his products at retail, or (3) a contractor incorporating imported or purchased material or commodities into the finished work or project, the

tax shall be one-half of one per cent of the purchase price of such tangible personal property, if the purchase and sale are consummated in Hawaii, or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the landed value of such property imported into Hawaii. For taxes on sales of tangible personal property by an out-of-state seller, including drop shipments and definitions, see §18-237-13-02.01. See subsection (g) for rules relating to basis of property.

(c) Certain scientific contracts with the United States. Notwithstanding the provisions of subsection (b) of this rule, the tax imposed by chapter 238, HRS, shall not apply to any use of property exempted by section 237-26, HRS. Thus, no use tax shall be levied or collected on tangible personal property which is to be affixed to, or to become a physical, integral part of the scientific facility, or which is to be entirely consumed during the performance of the service required by the contract or subcontract.

(d) All others. HRS section 238-2(3) provides that in all other cases, the tax shall be four per cent of the landed value of such tangible personal property. For taxes on sales of tangible personal property by an out-of-state seller, including drop shipments and definitions, see §18-237-13-02.01. See subsection (g) for rules relating to basis of property.

(e) Producers. See §18-238-4 relating to producers.

(f) Application of the rules contained in subsections (a), (b), (c), (d) and (e) of this section may be illustrated by the following examples.

Example 1: “A” purchases and imports a container load of merchandise from an out-of-state seller for resale in Hawaii to “X”, a retail discount store. “A’s” records further disclose that other imports and purchases made by “A” are sold to various other retail stores. Thus, because all sales are at the wholesale level, all such imports and purchases from an out-of-state seller are exempt from the use tax.

Example 2: “B”, who is in the business of manufacturing food items, imports food preservatives and food containers. The preservatives are to be incorporated into the manufactured product while the containers are used to make the finished product marketable. “B” has an agreement to sell all of his manufactured products exclusively to “S”, a large retail supermarket with many branches. Because all sales are at the wholesale level, “B” is exempt from the use tax. “B”, however, will be taxed on the activity of a manufacturer as provided under the general excise tax law.

Example 3: “C” is engaged in a scientific contract with the United States. To complete this construction project, certain scientific equipment and supplies which are to become an integral part of the project are imported because they are not available in Hawaii. On the basis of the fact that the imported properties are to become an integral part of the project, no use tax shall be levied or collected on the equipment and supplies imported by “C”.

Example 4: Assume the same facts in Example 3 except that “C” is engaged in an operation and maintenance scientific contract with the United States and imports supplies which are to be entirely consumed during the performance of the service contract. On the basis of the fact that the imported supplies are to be entirely consumed in the performance of the contract, no use tax shall be levied or collected on the supplies imported by “C”.

Example 5: If “A” and “B” in Examples 1 and 2 were also engaged in selling their merchandise and products at the retail level, use tax at the rate of one-half of one per cent would apply on the imports and purchases (for resale at retail) plus four per cent general excise tax on their subsequent sale at the retail level.

If “C” in Example 3 is involved in other construction projects which do not meet the provisions of section 237-26, HRS, “C” would be subject to the use tax at the rate of one-half of one per cent on the landed value of the tangible personal property imported and incorporated into such nonscientific projects.

If “C” in Example 4 is involved in other operation and maintenance contracts which do not meet the provisions of section 237-26, HRS, “C” would be subject to the use tax at the rate of four per cent on the landed value of the supplies imported for use in such nonscientific contracts.

Example 6: Service business. A tire recapper, “D”, who recaps tires belonging to other persons is subject to the use tax at the rate of four per cent in respect of tangible personal property (that is consumed in performance of a service) which: (1) “D” imports and incorporates into such tires; or (2) is transferred to “D” by another person who is not taxable under the general excise tax law in respect of such transfer and which is incorporated into such tires.

Example 7: Manufacturer. A tire recapper, “E”, who recaps tires for “E’s” own stock for resale is not subject to the use tax in respect of tangible personal property which: (1) “E” imports or acquires and incorporates into such tires; or (2) is transferred to “E” by another person who is not taxable under the general excise tax law in respect of such transfer and which is incorporated into such tires.

- (g) Basis of Property.
 - (1) Purchase price or landed value. Except as provided in paragraph (2), for purposes of section 238-2, HRS, and these rules, the basis of property shall be the purchase price of the tangible personal property if the purchase and sale are consummated in Hawaii or landed value of the tangible personal property if the purchase and sale are consummated outside of Hawaii or if there is no purchase price applicable thereto.
 - (2) Deduction for trade-in; depreciation, etc. The time of accrual of the tax in the case of an automobile imported into the State for use shall be at the time the automobile comes to rest in the State and ceases its character as an article in interstate commerce. The landed value for purposes of the use tax basis shall be the landed cost in the State. Such landed cost shall consist of invoice price plus freight, insurance, custom duty, and any other charges incident to landing the motor vehicle in the State, less: (1) trade-in allowance for old car; (2) any charges for license plates outside Hawaii; and (3) a depreciation allowance of ten per cent for normal use outside Hawaii, but this rate may be adjusted depending upon the mileage and condition of the car. The landed value of the motor vehicle shall not include any retail sales tax paid to another state or local government.
 - (A) When the motor vehicle has been used prior to bringing it into the State, the landed value for purposes of the use tax basis may be reduced by applying a depreciation allowance for normal use of the motor vehicle outside of the State. The depreciation allowed depends on the mileage and condition of the motor vehicle. No depreciation is allowed for a motor vehicle brought in to the State within 90 days of its date of purchase. The 90 day period shall not include any shipping time or any time during which a motor vehicle was placed in storage prior to its import into the State.
 - (B) For purposes of depreciation, the calculation of the landed value of a motor vehicle used prior to its importation into the State also may include the cost of any repairs or replacement parts added to the motor vehicle to maintain or increase its value during the taxpayer’s use of the motor vehicle prior to shipping the motor vehicle into the State. The department of taxation may require an explanation and supporting information for any depreciation reduction of the landed value of a motor vehicle. Taxpayers who believe a depreciation allowance is warranted may use the depreciation schedule printed on the back of the Use Tax Return (Form G-26).
 - (C) Section 238-3(h), HRS, allows a credit against the Hawaii use tax for the combined amount of sales or use taxes imposed by and paid to another state (or any subdivision thereof) on tangible personal property before it is imported into the State. Accordingly, a taxpayer may receive a credit up to the amount of Hawaii use tax due (4 percent of the landed value of the motor vehicle) for any sales or use taxes paid by the taxpayer to another state upon the purchase or use of the motor vehicle. The calculation of the credit shall not include any other taxes paid to other states, such as taxes on manufacturing, license fees, or transfer taxes. The amount of credit also shall not exceed the amount of use tax imposed by the State of Hawaii on such tangible personal property. To substantiate the claim for the credit allowance, the department of taxation may require copies of receipts or vouchers indicating the payment of the sales or use taxes to another state.
- (3) Temporary use. Temporary use of property shall not include any property located in or in use within the State for a period exceeding 365 days.
- (4) Labor charges. Labor charges for the repair or reconditioning of tangible personal property shall be included in the purchase price or landed value of the tangible personal property for purposes of determining the use tax basis.

- (5) Although the sales transaction may be based outside of Hawaii, which is merely a method or means of determining who is to pay the freight from that particular point, primary consideration should be given to the place of delivery of the tangible personal property. Whether the general excise tax or the use tax would be applicable depends upon where the place of delivery of the tangible personal property is located and whether the seller has nexus.
- (6) Application of the rules contained in paragraphs (1) and (5) may be illustrated by the following examples:

Example 1: A contract is executed in Hawaii by a local consumer and a dealer doing business in Hawaii with the place of delivery in San Francisco and the purchaser arranging for the shipment of the merchandise into Hawaii directly with a common carrier. The use tax of four per cent is applicable. Because the sale is consummated outside of Hawaii, the tax shall be based on the landed value of the merchandise; such value shall include the freight, insurance and handling charges and the seller is required to collect such taxes as provided by section 238-6, HRS, and §18-238-6.

Example 2: A local wholesaler purchases machinery through a dealer doing business in Hawaii. Although the transaction is F.O.B. San Francisco (the purchaser ultimately paying the freight), the actual place of delivery of the merchandise is in Honolulu. Because the dealer is doing business in Hawaii and the sale is consummated in Hawaii, the use tax is not applicable. However, the general excise tax is applicable to the dealer and the gross receipts of the dealer should include the freight, insurance and handling charges.

- (h) Deduction and Credit Procedures.
- (1) General Rule.
- (A) Section 238-2(1), HRS, provides that if a licensed wholesaler, jobber or manufacturer is also engaged in business as a retailer, a use tax of one-half of one per cent shall apply on all imports and purchases, but the director shall refund to the taxpayer in the manner provided in section 231-23(d), HRS, such amount of tax as the taxpayer shall to the satisfaction of the director, establish to have been paid by the taxpayer on such imports and purchases sold by the taxpayer as a wholesaler or manufacturer.
- (B) Section 238-4, HRS, provides that if a licensed producer who is an importer or purchaser of certain property, as specified in §18-238-4(b), is also engaged in business as a retailer, or in any manner other than as a wholesaler, a use tax of one-half of one per cent shall apply, the same as in the case of a purchaser who is a licensed retailer.
- (C) In lieu of the refund method provided in section 231-23(d), HRS, a taxpayer described in this paragraph (1) may elect to compute the tax liability for purposes of this chapter under one of the methods described in paragraph (2).
- (2) Permissible methods. The taxpayer may receive a deduction or credit, as the case may be, for imports and purchases from unlicensed sellers that were sold by the taxpayer as a wholesaler, jobber, manufacturer or producer if the taxpayer computes the taxpayer's liability under any of the following methods:
- (A) Method A (Direct Cost Method). Determine the total amount of imports and purchases from unlicensed sellers for the month. Ascertain from your records, category by category, the landed cost of the wholesale and manufacturing sales included in imports and purchases from unlicensed sellers for the month. Deduct this amount from the total imports and purchases from unlicensed sellers for the month and compute and pay the use tax on the remaining balance. Total amount and deductions must be reflected on monthly tax returns.

Example - A car dealer

1.	Total retail sales for the month		\$75,000
2.	Total wholesale sales for the month		\$15,000
3.	Total imports and purchases from unlicensed sellers for the month		\$50,000
4.	Compute cost of automobiles and accessories sold at wholesale during the month which has been included in item 3, item by item, or category by category		
	Model "X" sedans	Cost	\$4,000
	Model "Y" delivery trucks		6,000
	Model "Z" station wagons		2,000
	Accessories		<u>1,000</u>
	Total cost of wholesale sales to be excluded from the use tax basis		\$13,000
5.	Balance subject to the use tax		<u>\$37,000</u>

- (B) Method B (Percentage of wholesale sales to total sales method). Determine the total amount of imports and purchases from unlicensed sellers for the month. Ascertain the percentage of wholesale sales to total sales for the month. Apply the percentage so determined to the total amount of imports and purchases from unlicensed sellers for the month. This amount would be the amount excluded from the use tax base.

Example:

1.	Total retail sales for the month	\$85,000
2.	Total wholesale sales for this month	\$15,000
3.	Total imports and purchases from unlicensed sellers for the month	\$50,000
4.	Percentage of wholesale sales to total sales (\$15,000 ÷ \$100,000)	15%
5.	Total purchases to be excluded from the use tax base (\$50,000 x fifteen per cent)	\$ 7,500
6.	Imports and purchases subject to the use tax for the month (\$50,000 - \$7,500)	<u>\$42,500</u>

It will be permissible for a taxpayer to use the cost of sales to arrive at the percentage ratio for the exclusion of imports or purchases from unlicensed sellers for wholesale sales to compute the use tax base, if the taxpayer has accurate records to support these costs of sales figures. A schedule of these computations must be attached to the monthly tax returns.

- (C) Method C (Gross profit percentage method). Determine the total amount of imports and purchases from unlicensed sellers for the month. Ascertain by gross profit percentage method the cost of wholesale sales included in imports and purchases from unlicensed sellers for the month. Deduct this amount from the total amount of imports and purchases from unlicensed sellers for the month and compute the use tax on the remaining balance.

Example:

1.	Total imports and purchases from unlicensed sellers for the month	\$50,000
2.	Total wholesale sales for the month	\$10,000
	The average gross profit percentage as determined by taxpayer's records	40%
	Gross profit on wholesale sales	<u>\$ 4,000</u>
3.	Cost of wholesale sales for the month (\$ 10,000 - \$4,000)	<u>6,000</u>
4.	Balance subject to use tax for the month	<u>\$44,000</u>

Method C may be utilized only if taxpayer has good records and accounting data to compute proper gross profit percentage.

- (D) Method D (Other methods). The taxpayer may utilize any other method that will reflect the taxpayer's correct tax liability, provided such method is submitted to and approved by the director.
- (3) Special rules for paragraph (2). The taxpayer must select and use the method that will clearly reflect the taxpayer's correct tax liability. Whatever method is used must be used consistently. Permission to change method must have the consent of the director. However, the director may change the method used by the taxpayer anytime the director finds that the method used by the taxpayer does not reflect the taxpayer's correct tax liability. [Eff 2/16/82; am 5/26/98] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §§238-2, 238-4)

HRS §238-3**§18-238-3****Application of tax, etc. (a) - (h) (Reserved.)**

- (i) Credit for taxes paid to another state or subdivision thereof.
- (1) In general. Every taxpayer liable for the payment of use tax shall be entitled to a credit for the amount of any sales or use tax paid by him to any other state or subdivision thereof with respect to such property.
- (2) Conditions; limitations. The amount allowed in paragraph (1) shall be credited against the use tax payable upon such property by the taxpayer only upon his producing for the director satisfactory evidence in the form of receipts or vouchers indicating the payment of the sales or use tax to the other jurisdiction. The application of such credit, however, shall not exceed the amount of use tax payable under this chapter with respect to the same property. [Eff 2/16/82] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §238-3)

HRS §238-4**§18-238-4**

Certain property used by producers. (a) Section 238-4, HRS, provides that if a licensed producer, or a cooperative association (as defined in chapter 421 or under chapter 422, HRS) in order to sell to such producer or a licensed person operating a feed lot, imports into the State or acquires in the State, certain property, as specified in subsection (b), in such a manner and for such purposes as to conform with section 237-4(4),(5) or (6), HRS, then:

- (1) If the producer is engaged in the sale of his products at retail or in any manner other than at wholesale, there shall be imposed a use tax of one-half of one per cent, the same as in the case of

an importer or a purchaser who is a licensed retailer. (See §18-238-2(h) for deduction and credit procedures, other than the method provided in section 231-23(d), HRS, which a producer who is also a retailer is permitted to use in determining tax liability under chapter 238, HRS).

- (2) In other such cases, there shall be no tax.
- (b) The specific property referred to in HRS section 238-4 and subsection (a) are as follows:
 - (1) Cartons and such other containers, wrappers and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products;
 - (2) Seedlings and cuttings for producing nursery plants;
 - (3) Chick containers;
 - (4) Poultry or animal feed;
 - (5) Hatching eggs;
 - (6) Semen;
 - (7) Replacement stock;
 - (8) Seed or bait; or
 - (9) Breeding services.
- (c) Application of the rules contained in subsection (a) may be illustrated by the following examples:

Example 1: An agricultural cooperative purchases and imports from an unlicensed seller milking cows and feed for such cows, to be sold to licensed producers who sell all of their products exclusively to "X", a milk processor. Under subsection (a)(2), use tax shall not be imposed upon the imported milking cows and the feed.

Example 2: A licensed poultry farmer imports from an unlicensed seller feed for his egg laying hens. The eggs produced are sold mostly to grocery stores for resale; the balance of the eggs produced are sold to his neighbors and friends living in the vicinity of his farm. Under section 238-4, HRS, and §18-238-4(a)(1), the poultry farmer is liable for a use tax at the rate of one-half of one per cent, the same as in the case of a purchaser who is a licensed retailer, but only on the feed imported and attributable to sales of eggs made to his neighbors and friends. To determine his tax liability he may elect to use one of the methods permitted in §18-238-2(h).

Example 3: A licensed feed lot operator imports feed to be used in his pen feeding operations. The cattle entrusted in his care belong to various licensed producers who do not have the proper or necessary pen feeding facilities. Under section 238-4, HRS, and §18-238-4(a)(2), use tax shall not be imposed upon the imported feed. If the feed lot operator imported insecticides for use in maintaining his pen feeding facilities, a use tax at the rate of four per cent would apply because insecticides are not included among the specific property shown in §18-238-4(b). [Eff 2/16/82] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §238-4)

HRS §238-5 §18-238-5 Returns. (a) Except as provided in §18-238-6, any person liable for the tax under chapter 238, HRS, shall file a monthly return with the collector of the taxation district in which the property subject to the tax was held, or with the director at Honolulu. The return, Form G-HW-1, Schedule B shall be filed on or before the last day of each calendar month following the month in which the tax liability accrued and shall be accompanied by payment of the balance due after application of the deduction or credits, if any, as set out in §18-238-2(h).

(b) Notwithstanding the foregoing, a taxpayer may be eligible to file his return, Form G-HW-1, Schedule B, and make payment thereon, on a quarterly basis or, make monthly payments based on an estimated quarterly liability with a reconciliation return at the end of each quarter, if he possesses a valid and current permit to file his general excise tax return on a quarterly basis or file quarterly reconciliation of general excise tax returns and make monthly payments, issued by the director pursuant to the provisions of section 237-30, HRS, and Administrative Rule §18-237-30. The return and payments shall be filed with the collector of the taxation district in which the property subject to tax was held.

(c) In addition to the return required by subsection (a) or (b), every person subject to taxes both under chapter 238, HRS, or chapter 237, HRS, or both, shall, on or before the twentieth day of the fourth month following the close of the tax year, file an annual return, Form G-15, Schedule B, summarizing his liability under this chapter for such year. [Eff 2/16/82] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §238-5)

§18-238-5-01 (Reserved)

HRS §238-5 §18-238-5-02 Allocation of the purchase price or value of tangible personal property used in

this State. (a) Where used in this section, unless the context otherwise requires “assignment of tax” means the designation of the use tax to a taxation district where the property is first used in the State.

(b) The provisions of sections 18-237-34-01 to 18-237-34-12 consistent with this section and which may be appropriately applied to the assignment of the use tax as set forth in this section, shall be applicable to and incorporated in this section, to the extent necessary for the proper administration of the assignment of the use tax to the proper taxation district.

(c) When a taxpayer is subject to the use tax, the taxpayer shall allocate the purchase price or value of the tangible personal property to the taxation district where the property is first used. The term “use” is defined in section 238-1, HRS, and includes the exercise of any right or power over tangible personal property incident to the ownership of that property, whether the nature of the use causes the property to be appreciably consumed or not, or the keeping of the property for such use or for sale. The tax is imposed upon the user of the tangible personal property. The tax liability arises when the first use occurs in Hawaii and no additional use tax liability arises with respect to any subsequent use of that same property.

Example 1: Taxpayer is a furniture store which buys and imports furniture from an out-of-state seller who is not licensed under chapter 237, HRS. Taxpayer has stores located in the Oahu district, Maui district, and Kauai district. The seller ships the furniture to the Oahu district. Taxpayer subsequently ships some of the furniture to branch stores located in the Maui district and Kauai district. Taxpayer shall assign the use tax due on all of the furniture to the Oahu district.

Example 2: Taxpayer, a distributor located in the Maui district, purchases a product from an unlicensed seller located on the mainland. Taxpayer makes a sale to B, located in the Oahu district. The product will be shipped directly from the seller to B in the Oahu district. Taxpayer shall assign this purchase and the one-half percent use tax due to the Oahu district. Taxpayer also owes the four percent general excise tax on the sale of the product to B. Taxpayer shall allocate the gross income or proceeds of this sale to the Oahu district, where the product is delivered to B. [Eff 3/30/91] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §238-5)

HRS §238-6 §18-238-6 Collection of tax by seller, exceptions, statement of purchaser. (a) Pursuant to the provisions of section 238-6, HRS, every seller shall collect from the purchaser the tax imposed by section 238-2(3), HRS. Such collection shall be made within twenty days after the accrual of the tax. The tax collected from the purchaser shall be reported on return Form G-25 and such return and payment of the tax collected shall be made at the same time and in the same manner as provided in Administrative Rules §18-238-5(a), or if eligible, as provided in §18-238-5(b).

(b) The director, in his discretion, may relieve any seller from the duty of collecting and paying the tax as required by this section if he is satisfied that the tax can be effectively collected by other means.

(c) If a seller not otherwise required under §18-238-5 to collect the tax imposed by this chapter desires to so collect the tax, he may register his request for authority to collect the tax with the director by filing Form G-9. When authorized to collect the tax, the seller shall have the duty of collecting and paying over the tax in the same manner and at the same time as set out in this section.

(d) Statement of purchaser. If a statement is submitted by the purchaser to the seller indicating that certain purchased merchandise is not intended to be brought into Hawaii, the transaction shall be exempt from either the use tax or the general excise tax. Such statement, signed by the person making the statement, should be maintained by the seller to support the exemption. Whenever a seller receives and accepts in good faith from a purchaser a statement indicating that certain purchased merchandise is not intended to be brought into Hawaii but in fact is brought into Hawaii at some later date, the seller and not the purchaser shall be relieved of liability for the use tax with respect to the transaction. [Eff 2/16/82] (Auth: HRS §§231-3(9), 238-16) (Imp: HRS §238-6)

§18-238-7 to §18-238-16

(Reserved)